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BOMB FACTORY 2021, GP, INC.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	
	§	
THE BOMB FACTORY DALLAS, LP,	§	CASE NO. 22-30841-7
	§	
DEBTOR	§	
	§	

**AGREED MOTION FOR ENTRY OF AN ORDER CONVERTING
BANKRUPTCY CASE TO
A CASE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

COME NOW BF 2021 GP, LLC and Westdale Bomb Factory 2021, GP, Inc. (the “**Parties**”) each as a putative general partner of The Bomb Factory Dallas, LP (the “**Debtor**” or the “**Partnership**”), by and through counsel, and hereby seek entry of an order converting the Debtor's Chapter 7 case (the “**Bankruptcy Case**”) to a case administered under Chapter 11 of Title 11, Subchapter V of the United States Bankruptcy Code (the “**Motion**”). In support of this Motion the Parties respectfully represent the following:

Jurisdiction and Venue

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334.
2. Venue is proper before this Court pursuant to 28 U.S.C. §1408.
3. The statutory and rule-based predicates for the relief requested herein are sections 105(a) and 706(a) of the Bankruptcy Code, Rules 1017(f) and 9013 of the Federal Rules of Bankruptcy Procedure.

Background

4. The Debtor is a Texas limited partnership that was formed on August 19, 2014, for inter alia, the purpose of operating entertainment venues in the Deep Ellum area of Dallas, Texas.
5. The Partnership is made up of a general partner, and 3 limited partners. The ownership percentage of the Partnership is as follows:

General Partner	1%
Westdale Properties America I, Ltd.	70%
Clint Barlow	14.5%
Whitney Barlow	14.5%

6. On May 9, 2022, an involuntary petition was filed against the Partnership. BF 2021 GP, LLC and its controlling members filed a Motion to Dismiss.
7. As part of the resolution of the Motion to Dismiss, the Parties agreed to an order for relief, coupled with a conversion to Chapter 11, Subchapter V.

Relief Requested

8. By this Motion, the Parties respectfully request that the Court enter an order, converting the Debtor's Chapter 7 Bankruptcy Case to a case administered under Chapter 11, Subchapter V of the Bankruptcy Code, and authorize the Debtor to manage its property and affairs as a debtor-in- possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

Argument

9. Pursuant to section 706(a) of the Bankruptcy Code:

The debtor may convert a case under this chapter to a case under chapter 11 . . . of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

11 U.S.C. § 706(a) (emphasis added). This includes the period prior to and after the entry of an order for relief. Indeed, at least one bankruptcy court has held that a motion to convert is an acceptable response to an involuntary petition, with the order converting the case constituting an order for relief under the chosen chapter. *See In re Source Enterprises, Inc.*, 2006 Bankr. LEXIS 3094 (Bankr. S.D.N.Y. Nov. 8, 2006); *see also* 11 U.S.C. §348(a).

10. Section 706 sets forth only two prerequisites to conversion: (i) that the case has not previously been converted and (ii) that the debtor is eligible for the chapter chosen. *See* 11 U.S.C. §§ 706(a), (d). Both of these elements are satisfied in this case. The case has not previously been converted and the Debtor is eligible to be a debtor in chapter 11.

11. A Chapter 11 provides the best mechanism to a meaningful recovery to creditors and resolve pending litigation. The Partnership intends to quickly and efficiently advance a reorganization of the Debtor under a plan.

12. The Partnership has a near absolute right to convert the case pursuant to Section 706(a), which is limited only by extreme circumstances not present here. *See, e.g., In re Richardson*, 43 Bankr. 636, 638 (Bankr. M.D. Fla. 1984) ("The legislative history of§ 706(a) makes it clear that the debtor has a 'one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan.") (*citing* H.R. Rep. No. 595, 95th Cong., 1st Sess. 380 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 94 (1978)); *In re Premier General Holdings, Ltd.*, 427 B.R. 592, 600 (Bankr. W.D. Tex. 2010) ("[E]ven if an order for relief is entered on a petitioning creditor's

involuntary chapter 7 petition, the debtor has a near unbridled right to convert the case to chapter 11."). Indeed courts have recognized an alleged debtor's right to select the chapter under which the bankruptcy will proceed. *In re Holdco Capital Grp.*, 2011 Bankr. LEXIS 988, at *24 (Bankr. N.D. Ind. March 29, 2011) (holding that a subsequent voluntary petition would not result in the dismissal of an existing contested involuntary petition, but that the debtor's choice of chapter would be honored.). Accordingly, an order converting the Partnership's bankruptcy case to a case administered under chapter 11 of the Bankruptcy Code is warranted and should be entered.

WHEREFORE, for the reasons set forth herein the Parties respectfully request that the Court enter an order (a) converting the Partnership's bankruptcy case to a case administered under chapter 11 of the Bankruptcy Code, Subchapter V and (b) granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing pleading was served via electronic means to all parties who receive ECF notice in this case on June 17, 2022.

/s/ Howard Marc Spector
Howard Marc Spector